REMARKS

The present application was filed on March 31, 2004 with claims 1 through 28. Claims 1 through 28 are presently pending in the above-identified patent application.

5   In the Office Action, the Examiner rejected claims 1-8, 15-24, 27 and 28 under 35 U.S.C. §102(b) as being anticipated by Carino, Jr. (United States Patent No. 5,754,841), rejected claims 9, 10, 11 and 25 under 35 U.S.C. §103(a) as being unpatentable over Carino, Jr. in view of Walpole et al. (United States Patent Publication No. 2003/0233464), and rejected claims 12 and 26 under 35 U.S.C. §103(a) as being

10   unpatentable over Carino, Jr. in view of Aggarwal et al. (United States Patent Publication No. 2003/0081624). The Examiner indicated that claims 13 and 14 would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

The Examiner is thanked for the courtesy of a telephone interview on July

15   30, 2008. During the interview, the Examiner agreed that the cited reference (Carino) did not disclose or suggest "wherein the one or more statistics are useable to modify which data items are included in the set of data items" and indicated that a new search would be required.

Independent Claims 1, 17 and 28

20   Independent claims 1, 17, and 28 were rejected under 35 U.S.C. §102(b) as being anticipated by Carino. In particular, the Examiner asserts that Carino discloses selecting, based on one or more QoS criteria corresponding to a client, one or more given data items suitable for sending to the client in response to a query from the client, the one or more given data items selected from a set of data items (abstract; col. 4, lines 9-27; and

25   col. 6, lines 60-67); and determining one or more statistics associated with the one or more given data items (FIG. 3A; col. 8, lines 14-18); wherein the one or more statistics are useable to modify which data items are included in the set of data items (col. 8, lines 45-53).

Applicants note that Carino teaches, for example, that "these

30   *communications are established according to selected performance criteria indicated by*

a quality of service (QOS) parameter selected by the client 220." (Col. 6, lines 63-66; emphasis added.) Contrary to the Examiner's assertions, however, Applicants could find *no* disclosure or suggestion in Carino of a "*set of data items*," of "*selected data items*," or of *data items that are selected based on one or more QoS criteria.*

5   Applicants also note that Carino teaches:

> The optimizer module 316 optimizes and balances query
> plans using the appended cost values from the GDD 313 and derived costs
> computed from the parse tree. The optimizer module 316 iterates over the
> parse tree while evaluating parse tree branch options to modify the object
> parse tree which is used by the plan generator 318 to generate optimized
> query plans. Of course, the number of iterations can be bounded to avoid
> excessive optimization time.
> (Col. 8, lines 45-52.)

Contrary to the Examiner's assertions, Applicants could also find *no* disclosure or suggestion in Carino of "statistics associated with the given data items" or of using the one or more statistics to modify which data items are included in the set of data items. Independent claims 1, 17, and 28 require *selecting, based on one or more QoS criteria corresponding to a client, one or more given data items* suitable for sending to the client in response to a query, the one or more given data items selected from a set of data items; and determining one or more *statistics associated with the one or more given data items*; wherein the one or more *statistics are useable to modify which data items are included in the set of data items*.

Thus, Carino does not disclose or suggest selecting, based on one or more QoS criteria corresponding to a client in response to a query, one or more given data items suitable for sending to the client; and determining one or more statistics associated with the one or more given data items; wherein the one or more statistics are useable to modify which data items are included in the set of data items, as required by independent claims 1, 17, and 28.

Additional Cited References

30   Walpole was also cited by the Examiner for its disclosure of the transcoding of data based on specific QoS criteria. Walpole, however, does *not* address the subject of selecting data items based on QoS criteria.

Thus, Walpole does not disclose or selecting, based on one or more QoS criteria corresponding to a client in response to a query, one or more given data items suitable for sending to the client; and determining one or more statistics associated with the one or more given data items; wherein the one or more statistics are useable to modify

5   which data items are included in the set of data items, as required by independent claims 1, 17, and 28.

Aggarwal was also cited by the Examiner for its disclosure of QoS criteria levels or predefined QoS levels based on subscriber requirements. Aggarwal, however, does *not* address the subject of selecting data items based on QoS criteria.

10   Thus, Aggarwal does not disclose or suggest selecting, based on one or more QoS criteria corresponding to a client in response to a query, one or more given data items suitable for sending to the client; and determining one or more statistics associated with the one or more given data items; wherein the one or more statistics are useable to modify which data items are included in the set of data items, as required by

15   independent claims 1, 17, and 28.

Dependent Claims 2-16 and 18-27

Dependent claims 2-8, 15-16, 18-24, and 27 were rejected under 35 U.S.C. §102(b) as being anticipated by Carino, claims 9, 10, 11 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carino in view of Walpole, and claims 12 and

20   26 were rejected under 35 U.S.C. §103(a) as being unpatentable over Carino in view of Aggarwal.

Claims 2-16 and 18-27 are dependent on independent claims 1 and 17, respectively, and are therefore patentably distinguished over Carino, Walpole, and Aggarwal, alone or in combination, because of their dependency from independent

25   claims 1 and 17 for the reasons set forth above, as well as other elements these claims add in combination to their base claim. The Examiner has already indicated that claims 13 and 14 would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

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Conclusion

All of the pending claims, i.e., claims 1-28, are in condition for allowance and such favorable action is earnestly solicited.

If any outstanding issues remain, or if the Examiner has any further
5   suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

The Examiner's attention to this matter is appreciated.

Respectfully submitted,

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